Court of Justice of the European Union: Copyright protection cannot be based on aesthetic effect

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Copyright protection does not apply when clothing design produces a specific aesthetic effect. That was the decision reached by the European Court of Justice on 12 September 2019 in respect of a dispute between two Portuguese companies (Judgment ECLI:EU:C:2019:721).

The case involved two companies that design, produce and commercialise clothing: G-Star Raw CV and Cofemel - Sociedade de Vestuário SA. Cofemel is a dominant company in the textile sector in Portugal and had been accused by G-Star Raw CV of copying the design and model of its jeans, sweaters and T-shirts. In other words, G-Star Raw CV claimed breach of its copyright.The Portuguese Supreme Court, which heard the dispute, asked the European Court of Justice for clarification – in the light of the Copyright Directive (Directive 2001/29) – because it was confronted with different interpretations of the meaning of "works". At issue in particular was the correct interpretation of article 2, paragraph a) of the Directive.

Under the Directive, authors of work have the exclusive right to authorise or prohibit the reproduction and distribution of that work; under Portuguese legislation, copyright protection also extends to designs and models of such work. However, it does not specify the specific requirements for such protection.

The decision of the European Court of Justice is clear when stating that works that are intellectual creations are protected by copyright and that, in certain situations, such protection can extend to designs and models. However, it must be demonstrated that such protection is necessary; this"necessarily implies the existence of an … object [that can be identified] with sufficient precision and objectivity" (paragraph 32 of the relevant decision of the Court of Justice, Judgment ECLI:EU:C:2019:721). Following the issuance of this decision, the existence of a design or model resulting in a specific aesthetic effect is no longer sufficient – in and of itself – for it to fall under the definition of "work".

Arrêt ECLI: EU: C: 2019: 721 - Arrêt de la Cour de justice de l'Union européenne (troisième chambre), rendu le 12 septembre 2019 dans l'affaire Cofemel - Sociedade de Vestuário SA / G-Star Raw CV, Demande de décision préjudicielle introduite par la Cour suprême du Portugal

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(Supremo Tribunal de Justiça) dans le cadre de l'affaire C-683/17

http://curia.europa.eu/juris/document/document.jsf;jsessionid=AF02A2288238208F67D471DA4D5A509D?text=&docid=217668&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=6872492

Judgment ECLI:EU:C:2019:721 - Judgment of the Court (Third Chamber) of 12 September 2019 Cofemel – Sociedade de Vestuário SA v G-Star Raw CV, Request for a preliminary ruling from the Supremo Tribunal de Justiça Case C-683/17

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